

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27469

**FILE:** B-211161.2**DATE:** February 22, 1984**MATTER OF:** Kilfoyle Metal Building Company--  
Reconsideration**DIGEST:**

1. Protester's allegation that procuring officials misinformed protester that protester's proposal may have been low is irrelevant since protester's proposal was properly determined technically unacceptable and a technically unacceptable proposal cannot be considered for award.
2. Protester's allegations that proposals could not be properly evaluated without engineer-approved drawings which solicitation did not require and that solicitation should have contained a geographic restriction on eligible offerors are untimely under GAO Bid Protest Procedures which require protests alleging improprieties apparent on the face of the solicitation be filed prior to the closing date for receipt for proposals.

Kilfoyle Metal Building Company (Kilfoyle), requests reconsideration of our decision, Kilfoyle Metal Building Company, B-211161, August 16, 1983, 83-2 CPD 219, in which we dismissed that firm's protest of a proposed award of a contract to Gulf States/Silver States under request for proposals (RFP) No. MM2-3-SFC-085, issued by Hill Air Force Base, Utah (Air Force). In that decision, we held that since Kilfoyle was not eligible to receive award because it submitted a late proposal, it was not an interested party entitled to protest the proposed award under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983).

The record initially indicated that Kilfoyle's proposal was received the day after the closing date for receipt for proposals and Kilfoyle did not challenge this. However, subsequent to our decision, the Air Force submitted additional evidence (a United States Postal Service Express Mail Delivery receipt signed by an Air Force employee) which shows delivery of Kilfoyle's proposal on the closing date. The Air Force is uncertain whether the proposal was timely received. Based upon this information, we will consider Kilfoyle's protest. For the reasons stated below, the protest is denied in part and dismissed in part.

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The RFP was for 29 identical preengineered dormitory buildings which were required to meet certain mandatory minimum specifications. Proposals which met the specifications were to be evaluated based upon the total cost of the buildings as well as building appearance, durability and maintainability. Award was made on the basis of initial proposals to Gulf States/Silver States, at the overall lowest cost to the government, following a determination that Gulf States' proposal complied with all the requirements in the RFP and that there was adequate competition.

The record shows that Kilfoyle's proposal was determined technically unacceptable because it failed to comply with the mandatory specification that the buildings contain a minimum 8-foot beam clearance. Additionally, Kilfoyle's proposal failed to address the appearance, durability and maintainability requirements.

Kilfoyle does not challenge the Air Force's determination that the firm's proposal did not comply with the above RFP requirements, but alleges that the Air Force failed to provide the firm with accurate information concerning the evaluation of its proposal. Specifically, Kilfoyle alleges that on several occasions, procuring officials misinformed Kilfoyle that its proposal may have been low and in line for award.

This Office consistently has held that once an offer properly has been determined technically unacceptable, a lower price which that offer might provide is irrelevant, since a technically unacceptable offer cannot be considered for award. Dynamic Key Punch Incorporation, B-201487, June 2, 1981, 81-1 CPD 438. Here, the Air Force determined Kilfoyle's offer to be technically unacceptable and Kilfoyle does not dispute this determination. Further, the record confirms the Air Force's determination that Kilfoyle's proposal did not comply with the RFP requirements. Therefore, the protester was not prejudiced by the alleged misinformation concerning whether its offer was low, since the firm was ineligible for award regardless of its price.

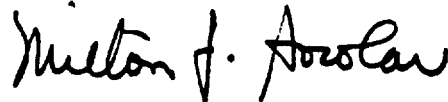
Kilfoyle also protests that the Air Force could not properly evaluate proposals because the solicitation did not require offerors to submit certain engineer-approved structural drawings. The solicitation required that these drawings be submitted by the awardee only, within 15 days of award.

Finally, Kilfoyle argues that under federal law, award should have been made to Kilfoyle because it is the only

firm in the area of contract performance which can supply the required buildings. Apparently, Kilfoyle is protesting that the solicitation should have contained a geographical restriction on eligible offerors.

Kilfoyle's protest concerning these matters is untimely. Our Bid Protest Procedures provide that protests alleging improprieties in the solicitation, where, as here, the improprieties are apparent prior to the closing date for receipt for proposals, must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983). Kilfoyle did not raise either of these issues until almost 2 months after the closing date. Therefore, Kilfoyle's protest on these bases is untimely and not for consideration on the merits. Wild Heerbrugg Instruments, Inc., B-210092, September 2, 1983, 83-2 CPD 295.

The protest is denied in part and dismissed in part.

A handwritten signature in black ink, reading "Milton J. Aroslan". The signature is written in a cursive, flowing style.

Acting Comptroller General  
of the United States